



# Tape seized

## State official confiscates park meeting recording

By Roger Matile

An Illinois Department of Public Health (IDPH) official seized an audio tape from Oswegoland Park District director Bert Gray last Thursday in the midst of a regularly scheduled park board meeting.

The seizure was made in spite of provisions of the Illinois Open Meetings Act that allow the taping of public meetings.

Louise Fabinski, senior regional representative of the Agency for Toxic Substances and Disease Registry, an arm of the U.S. Department of Health and Human Services, was present at last Thursday's board meeting to give a presentation outlining her agency's findings concerning a survey of Saa-Wee-Kee Park, located south of Oswego on Sundown Lane.

In the midst of her presentation, Fabinski realized Gray was taping her comments.

"Am I being taped without my permission?" Fabinski asked.

"Yes," Gray answered. "I wanted to get all your notes down."

"I'm sorry, you did not ask my permission," Fabinski stated. "I would like you to erase that tape."

Gray, obviously surprised by Fabinski's demand, turned off the tape recorder on the board table.

Then, Frank Vaughan, a sanitarian with the Illinois Department of Public Health who had accompanied Fabinski at the meeting, rose from his chair in the audience.

"Just give me the tape recorder too," Vaughan demanded. "Just give it to me."

Gray handed over the tape to Vaughan without protest.

"I would not have had a problem if I had been asked ahead of time, but that was not fair warning," Fabinski said to Gray after Vaughan seized the tape.

"Sorry," Gray responded. "I should let you know that I was not taking notes through all the things you said because...."

Interrupting, Fabinski said, "I'll be happy to go over this with you after the meeting."

Fabinski then completed her presentation. Following the meeting, she handed the tape back to Gray.

On Friday, Fabinski suggested Vaughan acted on his own when he seized the tape.

"I'm not responsible for what the Department of Public Health does," she suggested.

Fabinski said she had been startled to see the recorder running on the board table in the middle of her presentation. She said that she has been working in the her field since 1983, and contended it was the first time she had encountered a public body taping a meeting.

"It was a misunderstanding," she maintained. "I had no objection to being taped; I just would have liked the courtesy of being told. It was an error, I guess, on my part."

Vaughan reportedly left on vacation Friday and could not be reached for comment, but Joe O'Connor, an IDPH regional supervisor, said that Vaughan has no authority to seize tapes from anyone, especially during public meetings. He said the IDPH is fully committed to obeying the Illinois Open Meetings Act.

Shawn Denney, an attorney with the Illinois Attorney General's office stated the law is clear on taping public meetings.

*"The law is very clear that 'any person' may record public meetings. No one has the right to demand that taping be stopped nor do they have the right to take someone's tape."*

Shawn Denney

Illinois Attorney General's office

"The law is very clear that 'any person' may record public meetings," Denney said Friday. "No one has the right to demand that taping be stopped, nor do they have the right to take someone's tape. It certainly is not standard procedure for state officials or other employees."

The Illinois Open Meetings Act (Ill. Rev. Statutes Chap. 102, par. 41-46) states in paragraph 42.05 that: "any person may record the proceedings at meetings required to be open by this Act by tape, film, or other means."

Denney said that prior notice of such taping does not have to be provided, since anything said in a public meeting is, necessarily, open public business. Denney indicated there is no difference in Illinois law between taping a meeting and taking notes during it.

O'Connor said that he was able to reach Vaughan before he left on vacation, and that in taking the tape, Vaughan said he was not aware of the Open Meetings Act's provisions.

"I have talked with Mr. Vaughan and counseled him that taking tapes during public meetings is not at all appropriate," O'Connor said. "Mr. Vaughan's actions were taken apart from his role with this department."

O'Connor said Vaughan felt he was acting as a go-between between Fabinski and Gray, and did not intend to violate the law.

Gray said his main concern at the meeting was to avoid any public disturbance.

"I was dumbfounded," he admitted of Vaughan's seizure of the park district's tape. "I was totally caught unawares, I just gave him the tape."

Denney noted that no law was broken during the incident, although Illinois Press Association attorney Don Craven suggested that the park board themselves might have been at fault for allowing Vaughan to take the tape of their own meeting. Since the tape was returned following the meeting, Denney said there is no cause for legal action.

Fabinski promised to speak with legal counsel through her office to find out exactly what Illinois law is concerning taping of public meetings.

Denney said the Fabinski-Vaughan-Gray incident was an unusual one.

"I've heard of governmental boards attempting to stop citizens from taping public meetings, but this is the first time I've heard of audience members taking control of the tape of a governmental board," Denney concluded.